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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

N.T., Petitioner, vs. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G040862 (Super. Ct. No. DP011092-93) O P I N I O N

Original proceedings; petition for a write of mandate to challenge an order of the Superior Court of Orange County, Barbara Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Petition denied.

Juvenile Defenders and Donna P. Chirco for Petitioner.

No appearance for Respondent.

Benjamin P. de Mayo, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel for Real Party in Interest Orange County Social Services Agency.

Law Offices of Harold LaFlamme; Regan Dean Phillips for the Minors, Real Parties in Interest.

* * *

N.T. petitions for an extraordinary writ to vacate orders of the juvenile court removing her sons T.N. and C.N. from her care, denying further reunification services, and setting a hearing to decide on a permanent placement plan for her sons. (Welf. & Inst. Code, § 366.26.) N.T. contends there is insufficient evidence to support the court's orders, but we disagree and deny her petition.

FACTS

In late 2004, N.T. was living with her sons, T.N. (then age 9) and C.N. (then age 7), and two younger daughters in a Garden Grove motel. Although they had been getting assistance from the Orange County Social Services Agency (SSA), the family's situation was bleak. The girls' father was physically abusive to both N.T. and the children, and he also used drugs in front of the family.[1] In addition, N.T. frequently left the children unattended, and she was derelict in terms of getting the boys to school. After finding the children alone in their motel room one day, SSA detained them and successfully filed a dependency petition alleging failure to protect. Around this time, N.T. had another child, and because he exhibited signs of drug withdrawal, he too was declared a dependant of the juvenile court. All five children were placed in foster care.

Over the next 18-plus months, N.T. received extensive reunification services. At first, she was unable to hold a job or keep an apartment, and she often missed, or was late for, her court hearings and visitation. And although she was

[1] The girls, T.N. and C.N. all have different fathers. None of the fathers were involved in the proceedings below or are a party to this appeal.

eventually granted unsupervised visitation with T.N. and C.N., she sometimes left them alone or with unapproved caretakers during the visits. For instance, on one occasion, she left them at an arcade while she went off by herself. Therapy wasn't going well either, as N.T. rarely went to her appointments, and when she did, she was obstinate and evasive.

Over time, though, N.T. completed some parenting courses and secured an apartment and a job. She was also testing clean for drugs and alcohol, so that requirement was dropped from her case plan. Therapy improved, as well, as N.T. began opening up about her problems. She understood her chances of regaining custody of her younger children were slight, but she still held out hope she could get T.N. and C.N. back. At first, SSA opposed this and recommended N.T.'s parental rights be terminated across the board. However, because N.T. was making some progress on her case plan, it was agreed that T.N. and C.N. would be returned to her under a family maintenance plan. At this time — nearly two years into the case — N.T.'s parental rights over her three younger children were terminated, and they were placed for adoption.

N.T. and the boys were glad to be together again. However, by then, N.T. had lost her job and was struggling to make ends meet. She was also quite lax in terms of supervising the boys and often left them unattended. After school, for example, the boys typically went over to a friend's house, which was fine. But when dinnertime rolled around, they usually left the house and had no place to go. Most of the time, they waited alone in a park for N.T. to pick them up. And on one occasion, the friend's mother found them sleeping on her front lawn at 10:00 p.m., still waiting for N.T. to come and get them.

In 2007, the family was evicted from their apartment because N.T. had gambled away the rent money. After she secured a new apartment, she tried to keep the location a secret, but the social worker found out where the family was living and routinely made unannounced visits there. During one such visit, the social worker found some beds for the boys outside the apartment, even though they had been delivered about

10 days earlier. Another time, the social worker found N.T. and her boyfriend P.L. inside the apartment. They didn't know where the boys were and had to be told to go look for them. After much searching, they were found playing at a dangerous construction site.

In addition to her lackadaisical parenting style, N.T. also had a penchant for prevarication. She claimed she was getting the boys to school on time and helping them with their homework, but they consistently arrived at school late with their homework incomplete. They were also not getting the medical and dental attention N.T. said they were. When the social worker confronted N.T. about her lying, she refused to admit any wrongdoing or take responsibility for her actions. While she consistently professed her love for the boys, she demonstrated very little insight into her problems.

N.T. also made it difficult for her social worker to keep track of her. She wouldn't answer her phone, return messages or let the social worker know where she was working. Most of the time, the boys didn't know either, and like their mother, they often lied to mitigate N.T.'s failings. When the social worker found them alone or with an unapproved caretaker, they often claimed N.T. had only been gone for a few minutes, when she actually had been gone for hours. Several times during the case, the social worker detained the boys until N.T. was located and she was able to come and get them.

Overwhelmed by her circumstances, N.T. often left the boys with unapproved caretakers, such as neighbors and apartment managers. She also relied heavily on her boyfriend P.L. to help care for the boys. He babysat them, picked them up from school and even watched them overnight from time to time. But he hadn't passed a background check or been cleared to be around the boys. N.T. knew this was a problem. She was repeatedly told, by both her social worker and the court, that anyone who was going to be around the boys — including P.L. — had to pass a background check. Although P.L. refused to submit to a check, N.T. regularly let him watch the boys anyway. This became a huge issue in the case, and at one point, N.T. tried to make it go

away by telling the social worker P.L. had moved away. However, a few days later, the social worker visited N.T.'s apartment and found P.L. showering there.

On July 17, 2008, the social worker again found P.L. alone with the boys at the apartment. When N.T. arrived home, the social worker told her still again that P.L. was not allowed to stay with the boys until he passed a background check. At that point — after over a year of foot dragging — P.L. finally acquiesced to a check.

Based on the initial information SSA received about P.L.'s background, he was cleared to be around the boys. When the social worker went to N.T.'s apartment to tell her this, she was surprised to find P.L. there, alone with the boys. The social worker found this cause for concern because she had yet to tell anyone about P.L.'s clearance.

A few days later, SSA received further information about P.L.'s background. Among other things, it learned he had a record of violent criminal activity that included a 1998 manslaughter conviction for which he received a 10-year prison sentence. When confronted with this information, N.T. admitted knowing about P.L.'s record, but she felt he deserved a second chance because he was a "good guy." Despite P.L.'s history of violent criminal activity, she did not see anything wrong with him looking after the boys by himself.

However, in early August 2008, SSA detained the boys and filed a supplemental petition asking the court to remove them from N.T.'s care. The social worker was reluctant to do this at first, but the court was concerned about N.T.'s judgment and ability to care for the boys, in light of her supervisory lapses and pattern of disregarding court orders. The boys' attorney shared these concerns and was in favor of the boys' detention, and upon reflection, so was the social worker. In her report to the court, she described N.T.'s parenting skills as "greatly lacking" and noted she "has repeatedly failed to provide the children with appropriate and adequate supervision, and allowed her children to be left in the care of at least one individual . . . who she knew had been convicted of a violent crime."

Following a hearing on the supplemental petition, the court upheld the boys' removal from N.T.'s care. Noting N.T. had "long exceeded . . . not only the time but the kinds of services which are available to her," it found she was nonetheless unable to provide the boys with proper care and supervision. The court therefore sustained the supplemental petition, denied further reunification services and set a hearing to decide on a permanent placement plan for the boys.

I

N.T. contends there is insufficient evidence to justify the court's decision to remove the boys from her care. We disagree.

The juvenile court may remove a dependent child from the custody of his or her parents on a supplemental petition if there is a substantial danger to the child's health, safety or emotional well-being and there are no reasonable means by which the child can otherwise be protected. (Welf. & Inst. Code, § 361, subd. (c)(1); *In re Paul E.* (1995) 39 Cal.App.4th 996, 1003-1004.) While the juvenile court's findings in this regard must be based on clear and convincing evidence, we review a court's removal order under the substantial evidence test. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 170.) That is, "[w]e view the record in the light most favorable to the [removal] order and decide if the evidence is reasonable, credible and of solid value. [Citation.]" (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.)

In this case, it clearly is. N.T. correctly notes that her failure to follow the case plan is insufficient, by itself, to justify the boys' removal from her care. (*In re Paul E., supra*, 39 Cal.App.4th at p. 1004.) However, N.T. didn't just fall down on her case plan; she also put the boys in serious risk of physical and emotional harm. For instance, she let them go over to a friend's house after school, which was fine. But after leaving the house, they often had to wait alone in a park for N.T. to pick them up. And one time, they were found sleeping in the friend's front yard at 10:00, still waiting for N.T. to

arrive. Another time, they were found playing in a dangerous construction site, while N.T. and P.L. were sitting around the apartment. Even after the social worker expressed concern for the boys' safety, N.T. had to be told to get up and look for them.

N.T. couldn't be trusted to get the boys to school on time or ensure their homework was completed either, and she was also remiss in seeing to their medical and dental care. To make matters worse, she lied to the social worker about these issues, so it was hard to know precisely what was going in with the family. Still, it was pretty obvious she put the boys at risk with her transient lifestyle and indifferent parenting. She was constantly borrowing money to make ends meet and often found herself deep in debt to friends and employers. She had trouble keeping a job, and when she did have money, she did not always spend it wisely, as evidenced by her actions in gambling away the rent money one month. Sadly, N.T. failed to understand how being evicted, running from her landlords and changing apartments all the time could jeopardize the boys' emotional well-being. And her tendency to minimize her shortcomings and blame others for her problems was a constant refrain throughout the case.

Perhaps the most troubling aspect of the case, though, was N.T.'s tendency to leave the boys with unapproved caretakers. That group of people not only included friends and neighbors, but convicted felon P.L. Being N.T.'s boyfriend, P.L. was always around the family, even though the social worker and the court repeatedly admonished N.T. that he was not supposed to have contact with the boys until he passed a background check. Granted, it wasn't N.T.'s fault P.L. refused to submit to a check for so long. But, she knew about P.L.'s criminal record all along. And yet she still allowed him to baby-sit the boys and pick them up from school. N.T. makes much of the fact P.L. never physically harmed the boys, but she fails to realize she put her children at risk simply by leaving them in his care. And as much as N.T. would like to categorize her decision to leave the boys with P.L. as a minor deviation from her case plan, it epitomizes the sort of neglectful and risky behavior she displayed throughout the case.

In short, viewing the record most favorably to the judgment below, there is substantial evidence from which the trial judge could have inferred the boys were in substantial danger of physical or emotional harm and, short of removal, there were no other reasonable means by which they could be protected. We cannot, therefore, say the trial court erred in removing them from N.T.'s care.

II

N.T. also contends there is insufficient evidence to support the court's decision to deny her further reunification services. Again, we must disagree.

When, as here, a parent has previously failed in reunification services with respect to her children's siblings, the court may deny reunification services if she has not subsequently made a reasonable effort to treat the problems that led to the siblings' removal. (Welf. & Inst. Code, § 361.5, subd. (b)(10).) In reviewing the trial court's finding on this issue, we must determine whether it is supported by substantial evidence. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.) "'All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. . . .' [Citation.]" (*Ibid*.)

Assessing the evidence in this light, N.T.'s challenge to the sufficiency of the evidence plainly fails. To her credit, she did make some progress in her case plan. She did undergo counseling and complete some parenting classes, and there were no reports of drug use or domestic violence following the children's initial removal in 2004. However, N.T. has failed to make a reasonable effort to overcome her long-standing habit of leaving the boys alone or with unapproved caretakers.

That was one of the primary reasons her children were detained in the first place, but during the initial reunification period in 2005-2006, she often left the boys by themselves or with unapproved people when they were in her care. And as recounted above, that trend continued during the period of family maintenance services in 2007-2008. Apparently, N.T. did not see anything wrong with having her boys wait for her

alone in a park at night, or letting them spend enormous amounts of time alone with a convicted killer. But the social worker and the court had repeatedly warned her that this was contrary to the case plan, as well as the boys' best interests. All things considered, there is substantial evidence to support the court's determination N.T. was not making a reasonable effort to treat the problems that led to her children's removal.

Even so, N.T. claims the court should have ordered further reunification services because to do so would have been in the best interests of her children. While promoting the best interests of the children is the fundamental goal of the juvenile dependency system (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227), services ordinarily may not be extended beyond 18 months (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167). And in this case, N.T. has received services for over twice that length of time.

N.T. notes the boys have always wanted to live with her, and they appeared to be saddened when they were removed from her care. However, this does not mean it is in their best interest to extend reunification services. Their interests are best served by decisions that will give them an opportunity to develop into stable, well-adjusted adults. (*In re William B., supra*, 163 Cal.App.4th at p. 1227.) And, for the reasons we have explained, there is nothing to suggest that ordering additional reunification services will facilitate this goal. Therefore, we reject N.T.'s argument and uphold the trial court's decision to deny her yet more reunification services.

DISPOSITION

The petition is denied.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

MOORE, J.